

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No.347 of 2026
Reserved on: 18.08.2026
Date of decision: 25.08.2026

Gurvinder Kumar Mehta & another ...Petitioners

Versus

Shailesh ...Respondent

Coram:

The Hon’ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Suneet Goel, Senior Advocate with
Mr. Vivek Negi, Advocate.

For the respondent : Mr. Surinder Saklani, Advocate.

Romesh Verma, Judge:

The instant petition arises out of the order passed by the learned Senior Civil Judge, Nalagarh, dated 18.05.2026, whereby the application filed by the present petitioners for amendment of the reply has been ordered to be dismissed.

2. The facts, as emerge in the present case, are that the respondent, Shri Shailesh, filed a rent petition for eviction of the petitioners from rented shop Nos. 23 and 24 situated in Mehta Market, Ropar Road, Nalagarh. As per the averments as made in the rent petition, it has been stated that in respect of two commercial shops

Whether reporters of Local Papers may be allowed to see the judgment?

constructed over Khasra No. 390 (measuring 26.68 square metres) and Khasra No. 390/1 (measuring 26.68 square metres), situated in the area of Up-Mahal Mini Secretariat, Nalagarh, on Ropar Road, Mehta Market, Nalagarh, Tehsil Nalagarh, the respondent is the landlord. It has been stated in the petition that Gurvinder Kumar Mehta, petitioner No. 1, was inducted as a tenant in the shops for running his business as a junk dealer since 1990. Shop No. 24 on Khasra No. 390/1 was earlier in the ownership and possession of Shri Parveen Aggarwal, brother of the respondent, and the said shop was given to the respondent in a family settlement by his brother. The premises are non-residential and the same were rented out to single tenant, namely, petitioner No.1.

3. As per the case as set up by the respondent, petitioner No.1 has transferred his tenancy rights in respect of the entire rented premises in favour of his wife, petitioner No. 2, Smt. Neeru Bala, without written and express consent of the present respondent or his brother, Shri Parveen Aggarwal, who was the previous landlord of shop No. 24. According to the respondent, shop No. 23 was directly rented out by him to Gurvinder Kumar Mehta. Petitioner No.1 has sublet, or transferred his right of possession as a tenant in the shop in dispute to petitioner No.2 without any written consent of the respondent or his brother, Parveen Kumar, during the tenancy period and after the commencement of the Himachal Pradesh Urban Rent

Control Act, 1987, petitioner No.2 is running her business of sale of vehicles/automobile spare parts under the name and style of Neeru Trading in the rented shop. Thus, petitioner No. 1 has committed a wrongful and illegal act by subletting the shops in dispute to another person without the consent of the present respondent and therefore, the present petitioners are liable to be evicted.

4. Further, as per the case set up by the respondent, he requires the demised shops for the office and consulting rooms for his son, namely, Shri Rohan Aggarwal, who holds a Bachelor's degree in Information Technology Engineering from Australian National University and now intends to start his practice as an IT engineer in the urban area of Nalagarh. Therefore, eviction of the petitioners was sought by the present respondent from the learned Rent Controller.

5. The eviction petition came to be resisted by the petitioners by filing a detailed and comprehensive reply. The petition was contested on all grounds by refuting and denying the allegations and averments as made in the petition.

6. In para 5 of the reply, it has been stated that petitioner No. 2 is the wife of petitioner No.1 and there is no question of transferring the tenancy rights by petitioner No.1 in favour of petitioner No. 2. Being the legally wedded wife of petitioner No.1, she has paid the rent through cheques and the present respondent has received the rent of the premises from the petitioners. It has been stated that the

respondent cannot allege that the present petitioner No.1 has transferred his right of tenancy in favour of petitioner No. 2. It was reiterated that petitioner No.1 never transferred his tenancy rights in favour of his wife. Further, it was denied that his wife, petitioner No. 2, is running her business of sale of vehicles/automobile spare parts under the name and style of M/s Neeru Trading. The present petitioners denied all the allegations made in the eviction petition and prayed for the dismissal of the same.

7. During the pendency of the petition, the petitioners, who are the respondents before the learned Rent Controller, filed an application for the amendment of their reply to the eviction petition. In the application, it has been stated that the case has been fixed for the evidence of the present petitioners, which is yet to begin. No doubt the evidence of the respondent-landlord is over. The petitioners intend to amend the reply by taking grounds in addition to earlier reply already filed by the present petitioners. The application for amendment has been filed to amplify and highlight the facts mentioned in para 5 of the reply. The following factual aspects are required to be inserted and submitted, which are necessary for the fair disposal of the rent petition and which otherwise can also be presumed to be correct under the law and facts in hand. Therefore, applicants/present petitioners intend to add in para 5A that the present petitioners are husband and wife and both constitute joint Hindu family and their status under the law is one,

i.e., husband and wife. They constitute common business and they live in the same joint Hindu family together under the same roof as husband and wife and are a single unit in the ration card. The rent deed dated 21.03.1990 has been executed by Parveen Kumar being owner of shop number 24, as is also admitted by the present respondent Shailesh, who alleges himself to be the owner of shop number 24.

8. By means of application, the petitioners intend to incorporate that the landlord cannot go away from the agreement of shop No.24 executed by his brother Parveen Kumar, who is the real brother of Shailesh. Now respondent, in order to evict the present petitioners from the shop, has alleged himself to be the owner of shop No. 24 belonging to Parveen Kumar, who had entered into an agreement of rent with present petitioner No.1, husband of petitioner No.2. Shop No.23 has already been in possession of Neeru Bala as tenant, who had taken the shop from Shailesh. Both the shops are adjoining to each other.

9. As per the proposed amendment, the present petitioners intend to incorporate that petitioner No.1 is running business in shop No.24 since 1990 independently and has been paying rent regularly. However, shop No.23 was already given on rent to Neeru Bala, wife of petitioner No.1, since the year 1989 and has been paying rent regularly to Shailesh. Both shops are adjoining to each other and

husband and wife are running business in the shops since the years 1989 and 1990. By means of the application, the present petitioners intend to incorporate the factual matrix by adding para 5A in the reply.

10. The application filed by the petitioners was contested by the respondent by filing a reply, wherein all the averments made in the application were specifically denied and refuted.

11. In the reply, a stand was taken that despite availing opportunities by the petitioners to lead their evidence, the proposed amendment is being sought just to gain more time and cause further delay in the case. It has further been stated that the proposed amendment is neither legal nor valid, but the same is being sought to be incorporated in order to prolong the eviction petition. The respondent sought the dismissal of the application filed by the petitioners for amendment of the reply.

12. The learned Senior Civil Judge, Nalagarh, vide its impugned order dated 18.05.2026, dismissed the application.

13. Feeling dissatisfied, the petitioners have approached this Court by assailing the impugned order passed by the learned Trial Court.

14. It is contended by the learned Senior Counsel, Mr. Suneet Goel, assisted by Mr. Vivek Negi, learned counsel for the petitioners, that the impugned order passed by the learned trial Court is not sustainable in the eyes of law. He submitted that the learned

Court below has not adhered to the provisions of Order 6 Rule 17 of the CPC and, in view of the exposition of law laid down by the Hon'ble Apex Court, wherein it has been held that while dealing with an application for amendment a liberal approach should be adopted by the Court, on the contrary the Court below has erred in dismissing the same. He further submitted that after accepting the present petition, the application filed for amendment of reply by the present petitioners deserves to be allowed.

15. On the other hand, Mr. Surinder Saklani, learned counsel for the respondent, has defended the impugned order. He submitted that there is no infirmity or illegality in the impugned order; therefore, no interference of any kind is required in the present proceedings. He submitted that the endeavour of the present petitioners is to prolong the matter on one pretext or the other and since the proposed amendment is not required in the attending facts and circumstances of the case, therefore, the present petition, being devoid of any merit, deserves to be rejected.

16. I have heard the learned counsel for the parties and have also gone through the material available on record.

17. Before touching the merits of the case, this Court deems it appropriate to discuss the exposition of law on the point of amendment, as laid down by the Hon'ble Apex Court in its various judgments.

18. The Hon'ble Apex Court in ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited and another, (2022) 16 SCC 1***, has held that the Court must be extremely liberal in granting the prayer for amendment. If the Court is of the view that if such amendment is not allowed, a party who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where the relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation.

19. It has been further held by the Hon'ble Apex Court in the aforesaid judgment that the Courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take an alternative plea in defence, which, however, is subject to an exception that by the proposed amendment, the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for the determination of the real controversy in the suit, provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised or defence taken.

20. The Hon'ble Supreme Court in the case titled ***Mahila Ramkali Devi and others vs. Nandram (dead) through legal representatives and others, (2015) 13 SCC 132***, has held that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always permits amendment of the pleadings of the party unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of costs.

21. In the aforesaid judgment, the Hon'ble Apex Court came to the conclusion that the amendment as sought ought not to have been rejected by the High Court. Further, it has been held that the power to grant amendment of pleadings is intended to serve the needs of justice and is not governed by narrow or technical limitations.

22. In the case titled ***Chakreshwari Construction Private Limited vs Manohar Lal, (2017) 5 SCC 212***, the Hon'ble Apex Court has laid down the basic principles which ought to be taken into consideration while allowing or rejecting an application for amendment. As per the Hon'ble Apex Court, it has been held that though there was some delay on the part of the appellant in filing the application, the said delay had been duly explained by the appellant. It has been held that in appropriate cases, the parties are permitted to amend their

pleadings at any stage, not only during the pendency of the trial, but also at the first and the second appellate stages with the leave of the Court, provided the amendment proposed is bona fide, relevant, and necessary for deciding the rights of the parties and for doing complete justice. In the said judgment, it has been held that similarly, the law permits the parties to lead additional evidence at any stage of the trial, including the first and second appellate stages with the leave of the Court, provided a case is made out to seek such indulgence.

23. A Coordinate Bench of this Court in ***Kangra Central Co-operative Bank vs. Prabha Devi and others, 2017 Volume 2 Shim.LC 1135*** has held as follows:

"8. True, it is that there is no specific averment in the application that plaintiff despite due diligence failed to move an application at appropriate stage, but since there is only clerical mistake, court below ought not to have taken hyper technical view while dismissing the application for amendment filed by the plaintiff. Rather, after affording due opportunities to the parties, application should have been allowed and by now suit would have been decided.

9. The Hon'ble Apex Court in [Baldev Singh and others versus Manohar Singh and another](#) (2006) 6 Supreme Court Cases 498 has specifically held that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. It would be appropriate to reproduce para Nos.7,8 and 9 of the judgments herein:-

"7. Before we take up this question for our decision, we must consider some of the principles that govern allowing an amendment of the pleadings.

8. It is well settled by various decisions of this Court as well as the High Courts in India that courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe ...8...

Mya vs. Maung Mo Hnaung (AIR 1922 PC 249) in which the Privy Council observed (IA pp.216-17) .

"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit"

(emphasis supplied)

9. Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. From a bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 CPC it cannot be doubted that

wide power and unfettered discretion has been conferred on the court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court ...9...

shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously. By [the Code of Civil Procedure](#) .

(Amendment)Act, 2002 a proviso has been added to order 6 Rule 17 which restricts the courts from permitting an amendment to be allowed in the pleadings of either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, the court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So, far as proviso to [Order 6 Rule 17 of the Code of Civil Procedure](#) is concerned, we shall deal with it later."

10 xxx xxx

11. After having gone through the aforesaid judgments passed by the Hon'ble Apex Court, it clearly emerge that prayer for amendment, if any, is made at belated stage, needs to be accepted and amendment cannot be refused on the ground of delay, if it is found that for deciding real controversy between the parties, amendment can be made.

24. A similar exposition of law has been laid down by the Apex Court in the case titled **Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others, (2009) 10 SCC 84**, wherein it was held that the first condition which must be satisfied before an

amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real point of controversy. This is the basic test which should govern the Court's discretion in the grant or refusal of the amendment. It was held that the courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise, particularly when the Court deals with a case of amendment of pleadings.

25. The factors which are required to be taken into consideration have been enunciated in the said judgment in the following manner:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*
- (2) Whether the application for amendment is bona fide or mala fide?*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

(6) *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*”

26. The Hon'ble Apex Court in ***Dinesh Goyal alias Pappu vs. Suman Agarwal (Bindal) and Others, 2024 SCC OnLine SC 2615***, has held that courts should adopt a liberal approach in granting leave to amend pleadings, and the Hon'ble Apex Court has observed as follows:

“11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In [North Eastern Railway Administration, Gorakhpur v. Bhagwan Das](#)⁶ it was held as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under [Order 6 Rule 17 CPC](#) (as it stood at the relevant time) are concerned, these are also well settled. [Order 6 Rule 17 CPC](#) postulates amendment of pleadings at any stage of the proceedings. In [Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil](#) [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also

see [Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar](#) (1990) 1 SCC 166.]”

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in [Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.](#)⁷, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles: -

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of [Order VI Rule 17 of the CPC](#).

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(iii) Amendments, while generally should be allowed, the same should be disallowed if

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are – (I) The court should avoid a hyper-technical approach;

ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint”.

27. In view of the exposition of law as laid down by the Hon'ble Apex Court, this Court now adverts to the factual matrix of the case.

28. Admittedly, the present respondent has filed the eviction petition against the present petitioners before the learned Rent Controller. The respondent has set up the case that the premises are non-residential and the same were rented out to single tenant, i.e., petitioner No.1. However, he has transferred his tenancy rights in respect of the entire rented premises in favour of petitioner No.2 without the written consent of the present respondent or his brother.

29. Para-5 of the reply reads as follows:

“That this para of the petition is wrong & denied to the extent that the respondent no.1 has transferred his tenancy rights of the entire rented premises to respondent no.2 without the consent of landlord and his brother as alleged. As stated above respondent no.2 is wife of respondent no.1 and there is no question of transferring the tenancy rights by respondent no.1 in favour of respondent no.2. The respondent no.2 being legal wedded wife of respondent no.1 that is why she has paid rent through the cheques and the petitioner has received rent of the premises from respondent. The petitioner cannot say that the respondent no.1 has transferred his right of tenancy in favour of respondent no.2. Rest of the averments of this para are matter of record and petitioner is put to prove the same”.

30. The petitioners have stated in the reply that being the wife of petitioner No.1, there is no question of transferring the tenancy rights by petitioner No.1 in favour of petitioner No. 2. The parties are husband and wife and petitioner No. 2 has been paying rent through cheques and the respondent has accordingly received the rent of the premises from the petitioners.

31. It is the case of the petitioners that since the relationship between petitioners No.1 and 2 is that of husband and wife, therefore, it cannot be said that the tenancy rights have been transferred by petitioner No.1 in favour of petitioner No. 2.

32. The petitioners, in para 15(a)(ii) of the reply, have specifically denied the case of the respondent that there is any subletting on the part of petitioner No.1 in favour of petitioner No.2 with respect to the tenanted premises. It has been stated that petitioner No.1 has in no manner transferred the tenancy rights in favour of his wife and it has also been denied that petitioner No.2 is running her business of sale of vehicles/automobile spare parts, etc., under the name and style of M/s Neeru trading.

33. From a perusal of the reply and the stand taken by the present petitioners in their unamended reply and in the application whereby the proposed amendment is sought to be incorporated, does not establish that any contradictory or destructive plea has been taken by the present petitioners. Rather, as rightly pointed out by the learned

Senior Counsel for the petitioners, the proposed amendment is clarificatory and explanatory in nature and it will assist the Court to determine the real point of controversy between the parties.

34. Though the learned counsel for the respondent half-heartedly tried to project that by means of the proposed amendment, the present petitioners intend to withdraw the admission made in the unamended reply, yet when this Court specifically posed a query to the learned counsel as to which admission is being sought to be withdrawn by the present petitioners, he failed to satisfy this Court in any manner.

35. In the considered opinion of this Court, neither any admission is sought to be withdrawn by the present petitioners, nor it can be said that the plea is destructive or that it changes the character or nature of the reply as already filed in the proceedings.

36. The stand which is sought to be incorporated in the amendment seems to be clarificatory and no prejudice shall be caused to the present respondent in case the amendment as sought is incorporated in the pleadings of the petitioners.

37. As far as the contention of the learned counsel for the respondent that the present petitioners have failed to explain due diligence in filing the application for amendment is concerned, in the application, it has been categorically stated by the applicants that the said facts were brought to the notice of the earlier Advocate engaged

by them, but could not be incorporated by him due to oversight and inadvertence. Certainly, the present petitioners cannot be penalised on account of omission, if any, on the part of the earlier counsel, who did not incorporate the said facts in the main reply. The facts which are sought to be elaborated are neither inconsistent nor alien to the present proceedings. Therefore, no prejudice shall be caused to the respondent in case the amendment is allowed.

38. As stated earlier, since it is the case of the present petitioners that the said facts were brought to the notice of the earlier counsel, but could not be incorporated in the main reply, the present petitioners cannot be penalised.

39. Therefore, in the considered opinion of this Court, the application filed by the petitioners deserves to be allowed and the impugned order dated 18.05.2026, as passed by the learned trial Court deserves to be quashed and set aside. Ordered accordingly. However, the allowing of the application for amendment of the reply on behalf of the petitioners shall be subject to payment of costs of Rs.20,000/- to be paid by the petitioners to the respondent on the next date of hearing before the learned Rent Controller.

40. It has been argued by the learned counsel for the respondent that since the petitioners, despite availing various opportunities, have not concluded their evidence, therefore, the application for amendment is liable to be rejected. For that, it is

ordered that the learned trial Court shall take on record the copy of the amended reply and thereafter shall expedite the matter and take the same to its logical end within a period of six months from today.

41. Consequently, the present petition, is allowed. Pending miscellaneous application(s), if any, shall also stand disposed of.

42. Any observation made hereinabove is meant only for adjudication of the present proceedings and the same shall have no bearing on the merits of the main case.

(Romesh Verma)
Judge

25th August, 2026
(vt)